



VOSH PROGRAM DIRECTIVE: 02-008A

ISSUED: August 1, 1994

SUBJECT: Access to Employee Exposure and Medical Records, § 1910.20

A. Purpose.

This directive clarifies the difference between the federal OSHA standard and the VOSH standard concerning access to employee medical records.

This program directive is an internal guideline not a statutory or regulatory rule and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.

B. Scope.

This directive applies to all VOSH personnel.

C. Reference.

45 Fed. Reg. 35212 (May 23, 1980);
45 Fed. Reg. 54333 (August 15, 1980);
OSHA Instruction CPL 2.2.30 (November 14, 1980)
OSHA Instruction CPL 2-2.33 (February 8, 1982)
53 Fed. Reg. 38162 (September 29, 1988)

D. Cancellation.

VOSH Program Directive 02-008A (April 15, 1993).

E. Action.

Directors and Compliance Managers shall assure that the policies and procedures established in this directive to facilitate uniform enforcement are adhered to in conducting inspections.

F. Effective Date.

Previously enacted on May 1, 1981.

G. Expiration Date.

Not Applicable.

H. Background.

On May 23, 1980, federal OSHA published its final rule concerning Access to Employee Exposure and Medical Records, 29 CFR 1910.20 [45 Fed. Reg. 35212], which was adopted by the Safety and Health Codes Board at its July 23, 1980 meeting.

On January 15, 1981, the Safety and Health Codes Board adopted the amended standard which was identical to the federal OSHA standard [45 Fed. Reg. 54333, August 15, 1980] at that time. The Virginia standard had an effective date of May 1, 1981.

The August 15, 1980 rule, which is the current VOSH standard, imposed three (3) major obligations on employers:

- 1) Preservation and maintenance of exposure and medical records pertinent to an employee's occupational exposure to toxic substances or harmful physical agents. Generally, employee exposure records and analyses based on exposure or medical records are to be retained for thirty (30) years. Employee medical records are to be retained for the duration of employment plus thirty (30) years.
- 2) Assurance (throughout these time periods) that access will be available to pertinent exposure records by the exposed employee, fellow employees exposed or potentially exposed to similar job hazards, designated employee representatives, and VOSH.

Likewise, access to medical records is required to be ensured to an employee's designated representative, such as the employee's collective bargaining agent; but, because of the privacy contents involved, the employee must provide specific written consent for such access.

Employee and designated representative access is to be provided at a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request is made. Federal OSHA access to such records is to be further conditioned upon OSHA's compliance with procedures and protections which were simultaneously promulgated.

- 3) Inform employees (upon entering into employment, and annually thereafter) of their rights under the regulation and of the requisite procedures for exercising those rights.

An amendment to this standard was published by federal OSHA on September 29, 1988 [53 Fed. Reg. 38162], and incorporated essentially the same provisions as those promulgated on May 23, 1980, with the following major changes:

- 1) First aid records and medical records of short-term employees are exempted from record retention requests;
- 2) Microfilm storage of all, employee x-rays except chest x-rays is permitted;
- 3) Employer trade secrets are provided additional protection and are made to conform with OSHA's Hazard Communication standard;
- 4) Union representatives are required to show an occupational health need for requested records when seeking unconsented access to employee exposure records; and
- 5) No industries are treated separately with respect to trade secrets.

At its public hearing on November 14, 1988, the Safety and Health Codes Board decided to reject the amendment to this standard because, other than savings in time and money, there was no additional impact on Virginia employers by adopting the amendment. The Board also expressed concern that the amendment went beyond a health concern and that health personnel work with a lack of records already, and this amendment would not benefit them.

In view of the Board's rejection of the 1988 federal amendment, the standard adopted by the Board in 1981 remains in effect in Virginia.

Theron J. Bell
Commissioner

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<http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-80-10>

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